Abdal-Rahim v. L. 237. IBT & NYCHA, 59 OCB 19 (BCB 1997) [Decision No. B-19-97 (IP)]

OFFICE OF COLLECTIVE BARGAINING
BOARD OF COLLECTIVE BARGAINING

In the Matter of the Improper Practice Proceeding	:	
between	:	
Aladdin Abdal-Rahim, pro se	:	
Petitioner,	:	
and	:	Decision No. B-19-97 Docket No. BCB-1632-94
Local 237, International Brotherhood of Teamsters and New York City Housing Authority	:	
Respondents.	:	

DECISION AND ORDER

On January 24, 1994, Aladdin Abdal-Rahim, pro se ("petitioner") filed a verified improper practice petition against Local 371 of the Social Service Employees Union ("the Union") and the New York City Housing Authority ("the Housing Authority"). It alleged, in its entirety:

> Improper representation, amounting to discriminatory treatment and denial of union rights, civil rights, citizenship rights and human rights. I filed a grievance against the employer alleging lies, flse statements and untruths in a late evaluation requesting my termination on baseless and spurious grounds. I was never afforded copies of my evaluation or other material despite numerous requests. The union never mounted a credible defense, instead informing me in November 1993 that the matter was concluded.

The Union filed an answer on February 18, 1994. It claims

that the petitioner was employed in the title Stock Handler and was in his probationary period when his employment was terminated. It maintains that it represented the petitioner in challenging the performance evaluation and attempted to intercede on his behalf concerning his termination. Furthermore, the Union contends, its actions were taken in good faith and were in no way arbitrary, capricious or discriminatory.

The City filed an answer on March 8, 1994. It argued that the petitioner's claim should be denied because it failed to state a cause of action.

By letter dated April 8, 1994, the Trial Examiner explained to the petitioner that he had the right to file a reply and would be allowed to do so until April 30, 1994. On April 30, 1994, the petitioner requested an extension of time until May 31, 1994 to reply, because he had been ill. His request was granted. On June 29, 1994, the petitioner requested an additional extension of time in which to file a reply, claiming that he had been evicted from his apartment but hoped to have his reply "ready within the very near future." By letter dated July 5, 1994, the Trial Examiner allowed the petitioner until November 30, 1994 to file a reply, but added that no more extensions would be granted. The petitioner did not file a reply.

The petitioner inquired about his case in January and March 1997 and was told that he would not be allowed to file a reply.

By letter dated March 27, 1997, the petitioner asked to be granted leave for oral argument before the Board, citing his poverty as the reason for his inability to file a reply.

The City maintains that the petitioner has not alleged that it has violated the New York City Collective Bargaining Law. In addition, it claims that there is no possible remedy for the petitioner since he was never an employee of the Child Welfare Administration.

Discussion

At the outset, we will comment on the petitioner's arguments concerning oral argument, timeliness and less stringent treatment of pro se petitioners. Permission for oral argument is granted solely at the discretion of this Board and the administrative agency which serves it. Oral argument is not a substitute for submitting a reply; we have never allowed a party to a case before us to submit a reply other than in writing.

We agree with the petitioner that persons filing pro se should be treated less stringently; as we have often reminded the parties, we do not require a pro se petitioner to execute technically perfect or detailed pleadings.[1] It is for this reason that the petitioner was allowed more than seven months to file a

[1] See, e.g., Decision No. B-15-93 at 26.

reply, rather than the ten days allowed by statute.

We have also found, however, that "[g]ood practice requires prompt responses to time-limited pleadings and we will, in an appropriate case, disallow any pleading that is egregiously late or that is shown to prejudice the interests of a party."[2] The term "egregiously late" can reasonably be applied when a petitioner, given an extra seven months to file a reply, does not do so but argues more than two years later that he should be allowed not only to submit a reply, but to submit a reply by oral argument. Further, it is unreasonable to expect us to accede to such a request simply on the grounds that the petitioner is filing pro se and that he believes he has such a right, and to expect us also to prejudice the other parties by so doing. Therefore, we will not allow the petitioner to submit a reply, either in writing or by oral argument.

The duty of fair representation requires only that a union act fairly, impartially and non-arbitrarily in negotiating, administering and enforcing collective bargaining agreements. A union is permitted wide discretion in contract administration, as long as its refusal to act on a complaint is made in good faith and in a manner which is neither arbitrary nor discriminatory. Therefore, a union does not breach its duty merely because it

[2]Decision No. B-8-92.

refuses to advance a grievance.[3]

Here, the petitioner has failed to show that there was any alleged contractual violation for which he could have filed a grievance and, thus, that the Union had breached its duty of fair representation by not proceeding on such a grievance. The Union has no right to seek arbitration on the issue of the petitioner's termination of employment.[4] Since the rights of probationary employees are limited by law, the Union could not and did not have an obligation to file a grievance on the petitioner's behalf.[5] Further, even if the petitioner had not been on probation, he has not shown, even arguably, that the Union's failure to bring his grievance to arbitration was arbitrary, capricious or discriminatory.

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[3]Decision No. B-23-94.

[4]Article VI ("Grievance Procedure"), Section 1 of the collective bargaining agreement between the parties defines a grievance, in relevant part, as:

e. A claimed wrongful, disciplinary action taken against a permanent employee covered by section 75(1) of the Civil Service Law ... upon whom the agency head has served written charges of incompetency or misconduct while the employee is serving in the employee's permanent title....

f. A claimed wrongful disciplinary action taken against a provisional employee who has served for two years in the same agency.

See also, Decision No. B-24-95.

[5]Decision No. B-51-88.

A finding of improper employer practice under our statute requires a claim that the employer interfered in some way with protected employee rights.[6] These include, broadly, the rights to form, join and organize public employee organizations and the right to refrain from so doing.[7] The petition does not allege any violation by the City of rights protected under our statute.

Accordingly, for all of the above reasons, the instant improper practice claim is dismissed in its entirety.

[6]Decision No. B-17-94.

[7]Sections 12-305 and 12-306 of the New York City Collective Bargaining Law.

DECISION AND ORDER

Pursuant to the powers vested in the Board of Collective Bargaining by the New York City Collective Bargaining Law, it is hereby

ORDERED, that the improper practice petition docketed as BCB-1630-94 be, and the same hereby is, dismissed.

Dated: New York, New York
April 24, 1997

Steven C. DeCosta
CHAIRMAN

George Nicolau
MEMBER

Daniel G. Collins
MEMBER

Carolyn Gentile
MEMBER

Thomas J. Giblin
MEMBER

Richard A. Wilsker
MEMBER

Saul G. Kramer
MEMBER